

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's Action dated December 2, 2008. Claims 1 and 18 have been amended, without intending to abandon or to dedicate to the public any patentable subject matter. No claims have been canceled. Accordingly, Claims 1-15 and 18 are now pending. As set forth herein, reconsideration and withdrawal of the rejections of the claims are respectfully requested.

On January 29, 2009, an interview between Examiner Sirmons, Examiner Gray and the undersigned regarding the above-identified patent application was held by telephone. During the interview, the pending rejections of the claims as being anticipated by or obvious in view of the prior art was discussed. In particular, the undersigned pointed out distinctions between the reference found to anticipate the pending claims, U.S. Patent No. 5,300,030 to Crossman et al. ("Crossman") and the pending claims. In particular, the undersigned noted that the components of Crossman found to constitute the claimed inner housing were not in contact with the barrel of the syringe. No final agreement regarding allowable subject matter was reached.

Claims 1-8, 10-15 and 18 stand rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,300,030 to Crossman et al. ("Crossman"). In addition, Claim 9 stands rejected under 35 U.S.C. §103 as being unpatentable over Crossman in view of U.S. Patent No. 6,270,479 to Bergens et al. ("Bergens"). In order for a rejection under 35 U.S.C. §102 to be proper, each and every element as set forth in a claim must be found, either expressly or inherently described, in a single prior art reference. (MPEP §2131.) In order to establish a *prima facie* case of obviousness under §103, there must be some suggestion or motivation to modify the reference or to combine the reference teachings, there must be a reasonable expectation of success, and the prior art reference or references must teach or suggest all of the claim limitations. (MPEP §2143.) Moreover, "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ 2d 1329, 1336 (Fed. Cir. 2006); See also, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. _____, 127 S.Ct. 1727, 1741, 82 USPQ 2d 1385, 1396 (U.S. 2007) (quoting statement of *In re Kahn* with approval).) However, the cited references do not disclose each and every element of the claims, whether those references are

considered alone or in combination. For example, the references do not disclose an inner housing that is in contact with and that acts on a barrel holding a dose of medicament to move the barrel axially as claimed. In addition, the cited references do not disclose an inner housing that acts on the barrel other than via the medicament. Accordingly, for at least these reasons, the rejections of the claims should be reconsidered and withdrawn.

The claimed invention is generally directed to an injection device or method of delivering an injection in which a barrel for holding a dose of medicament is, in at least a first mode, moved axially by an inner housing that is in contact with the barrel. Moreover, the claims have been amended to clarify that the inner housing acts on the barrel other than via the medicament held by the barrel. At least these features are not taught, suggested or described by the cited references.

The Crossman reference is generally directed to injection devices. According to Crossman, a drive member 8 acts on a plunger 27 to shoot a charged capsule 18 forward via the virtually incompressible fluid in the capsule. (Crossman, Abstract; col. 3, ll. 11-17.) Moreover, the drive member 8 of Crossman is not in contact with the capsule (*i.e.*, the barrel of the syringe) while the drive member is moving the needle 22 of the capsule forward. (Crossman, Figs. 1 and 2.) Therefore, the Crossman reference does not disclose an inner housing that is in contact with a barrel as recited by the claims. In addition, Crossman is explicit in the use of the incompressible fluid within the capsule as the substantially solid body that is used to carry the capsule forward 18 when the drive member 8 acts on the plunger 26. (Crossman, col. 2, ln. 58 to col. 3, ln. 17.) Therefore, the Crossman reference does not disclose an inner housing that acts on a barrel other than via medicament contained in that barrel. Accordingly, for at least these reasons, each and every element of the pending claims is not taught, suggested or described by the Crossman reference, and the rejections of the claims as anticipated by or obvious in view of Crossman should be reconsidered and withdrawn.


The Bergens reference is cited for disclosing the use of an energy source that comprises a compressed gas, recited by dependent Claim 9. Although Bergens does discuss drives that utilize stored energy, including energy stored as "gas pressure or gas releasing", the Bergens reference does not supply other elements of the pending claims absent from the Crossman reference. Accordingly, the rejection of Claim 9 as obvious should be reconsidered and withdrawn.

The application now appearing to be in form for allowance, early notification of same is respectfully requested. The Examiner is invited to contact the undersigned by telephone if doing so would be of assistance.

Respectfully submitted,

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